

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CASE NUMBER: 502008CP001929XXXXSB IX

IN RE: THE ESTATE OF STANLEY ACKER

MARK ACKER, individually, and as Co-Personal Representative of the Estate of Stanley Acker and as Co-trustee of the Stanley Acker Revocable Living Trust

Petitioner,

v.

KIRK FRIEDLAND, individually, and as Co-Personal Representative of the Estate of Stanley Acker and as Co-trustee of the Stanley Acker Revocable Living Trust,

Respondent.

MARK ACKER'S PETITION FOR REMOVAL OF KIRK FRIEDLAND, ESQ., AS CO-PERSONAL REPRESENTATIVE AND CO-TRUSTEE

Petitioner, Mark Acker ("Mark"), individually, and as Co-Personal Representative of the Estate of Stanley Acker ("Estate") and as co-trustee of the Stanley Acker Revocable Living Trust ("Trust"), and as a beneficiary of the Estate and Trust, pursuant to sections 733.504 and 736.0202, Florida Statutes, hereby moves for removal of Kirk Friedland, Esq. ("Friedland"), as co-personal representative of the Estate and as co-trustee of the Trust, and in support thereof states as follows:

1. Friedland -- who was appointed by the Court in November 2010 to serve as a neutral co-trustee of the Trust and neutral co-personal representative of the Estate -- is the only one of the co-trustees and co-personal representatives to receive fees as such. Nevertheless – and despite being paid *in excess of \$700 thousand in fees* -- Friedland has failed to perform the basic requirements of a trustee. In over seven (7) years as co-trustee, *Friedland has failed to obtain and provide a single accounting of the Trust*, in direct violation of the requirements of section

736.08135, Fla. Stat., to provide an annual accounting. Moreover, Friedland has rejected Mark's repeated requests for the Trust to retain an accountant to perform the statutorily-required accounting.

2. Further, Friedland has stated his intention to close the Estate without ever providing the final accounting required by Florida Probate Rule 5.400.

3. Moreover, Friedland has repeatedly demonstrated bias against Mark and in favor of Mark's siblings, Karen Acker ("Karen") and David Acker ("David") (together, the "Siblings").

4. Friedland has also acted in total disregard of flagrant conflicts of interest.

5. Friedland's bias against Mark and conflicts of interest are adverse to the interests of the Estate and Trust.

6. Friedland has seriously breached his duty owed to Mark as a beneficiary of the Trust. *See* § 736.1001(1), § 736.0202(2)(a), Fla. Stat.

7. Friedland's bias against Mark and in favor of the Siblings has engendered a lack of cooperation among the co-trustees that has substantially impaired the administration of the Trust. *See* § 736.0202(2)(b), Fla. Stat.

8. Friedland has been an unfit trustee, and has persistently failed to administer the Trust effectively. *See* § 736.0202(2)(b), Fla. Stat.

9. Friedland has wasted and maladministered the Estate. *See* § 733.504(5), Fla. Stat.

10. Friedland's conflicting and adverse interests against the Estate have interfered with the administration of the Estate as a whole. *See* § 733.504(9), Fla. Stat.

11. Examples of Friedland's bias and conflicts of interest include, but are not limited to, the following:

a. Friedland's use of his "tie-breaking" vote to reflexively approve virtually all of the millions of dollars in attorney's fees/costs requested by Karen/David while

simultaneously rejecting all but a minor portion of the fees/costs requested by Mark.

b. Friedland's use of his "tie-breaking" vote to approve all of his own requested fees -- over Mark's objections -- while simultaneously rejecting all but a minor portion of the fees requested by Mark.

c. Friedland's conflict of interest in voting to approve his own fees and those of Karen/David's attorneys in opposing Mark's motion for an evidentiary hearing on Mark's omnibus/1.540 motion – and voting to deny Mark's fees -- despite the fact that the Court ruled in Mark's favor that an evidentiary hearing is required on Mark's 1.540 motion, which has been specially-set for May 1, 2018.

d. Friedland's conflict of interest in approving fees for himself and Karen/David's attorneys in connection with the upcoming May 1, 2018 hearing – while simultaneously rejecting Mark's fees – despite the fact that the 1.540 motion is grounded on Friedland's own fraud on the Court. In other words, Friedland is misusing Estate/Trust funds to fund a defense against claims based on his own misconduct.

e. Friedland's "reflexive" approval of Karen/David attorney's fees, and "reflexive" denial of Mark's attorney's fees, as found by the Court in a November 7, 2017 Order following an evidentiary hearing.

f. Friedland's filing of "joinders" in support of Karen/David's various motions against Mark.

g. Friedland's testimony against Mark, including the above-referenced fraud on the Court during the 2013 evidentiary hearing before the Honorable David E. French.

h. Friedland has wrongfully and surreptitiously acted in concert with Karen and David to enter into a New York "So-Ordered Stipulation" on behalf of the Estate/Trust without such Stipulation first being brought to a fiduciary meeting for discussion and a vote, all to Mark's

detriment and without his knowledge or consent. Friedland has stated in open court that Mark would be reimbursed after providing evidence of his damages due to the unauthorized So-Ordered Stipulation but has nevertheless refused to authorize payment even after Mark's undisputed evidence as to his damages.

12. The position of a court-appointed personal representative, such as Friedland, "carries less weight than a personal representative appointed by the testator" such as Mark. *See Vaughn v. Batchelder*, 633 So. 2d 526, 528–29 (Fla. 2d DCA 1994).

13. The Court should remove Friedland as co-personal representative of the Estate and co-trustee of the Trust.

WHEREFORE, Mark Acker respectfully requests that the Court:

- (1) Remove Friedland as co-personal representative of the Estate, and revoke his letters of administration;
- (2) Remove Friedland as a co-trustee of the Trust;
- (3) Award damages against Friedland personally, including disgorgement of fees; and
- (4) For all other relief that the Court deems reasonable under the circumstances.

Respectfully Submitted,

**ATTORNEYS FOR MARK ACKER,
INDIVIDUALLY, AND AS CO-PERSONAL
REPRESENTATIVE OF THE ESTATE
OF STANLEY ACKER AND CO-TRUSTEE OF THE
AMENDED AND RESTATED REVOCABLE
INTERVIVOS STANLEY ACKER SETTLOR TRUST
AGREEMENT**

By: /s/ Donna Greenspan Solomon
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February 2018, a true and correct copy of the foregoing was served via filing through the e-portal with electronic service on:

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Respectfully Submitted,

By: /s/ Donna Greenspan Solomon
**ATTORNEYS FOR MARK ACKER,
INDIVIDUALLY, AND AS CO-PERSONAL
REPRESENTATIVE OF THE ESTATE
OF STANLEY ACKER**